



LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

KENTUCKY DIVORCE LAW

WHAT ARE THE GROUNDS FOR DIVORCE?

Kentucky has a “no fault” divorce law, which means that it is not necessary to show grounds for dissolution of the marriage based on the wrongdoing or marital misconduct of one of the husband or wife. The basis for divorce is the irretrievable breakdown of the marriage, or the parties to the marriage cannot continue to live together as husband and wife and there is no reasonable prospect for reconciliation.

WHAT ARE THE PROCEDURES?

Must Reside in Kentucky For 180 Days. One of the parties must be a resident of Kentucky for at least 180 days before filing the petition for divorce. A soldier who has been stationed at Fort Knox for 180 days satisfies this requirement, even though his home of record is in another state.

Filing the Petition for Divorce. To apply for a divorce, a petition is filed in the Circuit Court of the county where the husband or wife usually reside. The other party then has 20 days to respond to the petition or a judgment by default may be entered by the judge. The divorce will be finalized after hearing evidence which may require the parties to have to testify in court. If the other party is contesting or objecting to any aspect of the divorce, such as alimony, child custody or support, division of property, etc., they will appear before the judge and argue their side of the case.

Final Judgment. If there are minor children, the law requires a 60 day waiting period before the divorce can be finalized. Also, the parties must have been separated at least 60 days before the divorce can be finalized. This 60 day separation period can include living in the same house so long as they do not have sexual relations and can include a period of separation which occurred prior to filing the divorce petition. Once these waiting periods have expired and the judge has decided all the disputed questions, he will sign a final judgment, and the divorce will be finalized.

The above procedures may vary. For example, the evidence may be submitted as written depositions from the parties so that a personal appearance is not required, or the judge may refer an uncontested case to a special Commissioner.

SUPPORT, CUSTODY AND PROPERTY ISSUES

The rights and responsibilities that the husband and wife have toward each other will be resolved during the divorce. If the parties can agree, then these issues can be listed in a separation agreement to be made part of the final divorce decree. If the parties cannot agree, then the judge will decide whether the marriage is to be dissolved and how alimony or maintenance, child custody, child support, and division of property are to be handled.

Irretrievable Breakdown. The allegation that the marriage is irretrievably broken must be proved. This, however, is normally not a significant issue in a divorce and is usually shown by an affidavit.

Alimony or Maintenance. Kentucky uses the term “maintenance” in lieu of alimony or spousal support, and either spouse may be obligated to support the other. Maintenance may be awarded while the divorce is pending and after it is final. Permanent maintenance for a spouse can be awarded only if the court first finds the spouse seeking maintenance lacks

sufficient property to provide for their reasonable needs and is unable to support himself/herself through appropriate employment. If the court overcomes this hurdle in favor of the spouse seeking maintenance, it will then examine the financial resources of the party seeking maintenance and his/her ability to seek training or obtain appropriate employment, the standard of living during the marriage, duration of the marriage, age and physical or emotional condition of the spouse seeking maintenance, and the ability of the paying spouse to meet his/her needs while meeting those of the spouse seeking maintenance.

The burden is on the spouse seeking maintenance to convince the court of his or her need. As a practical matter, it is difficult to get maintenance unless the marriage is very long and the spouse has no other source of income. Even though fault or marital misconduct is no longer a relevant factor in granting a divorce, fault is relevant upon the issue of maintenance. In Kentucky fault can be considered so that a spouse entirely at fault may be denied maintenance.

Child Custody and Support. Either parent may be awarded custody of minor children. The decision is based upon the best interests of the children - the child's physical, mental, moral and spiritual well being. Factors considered by the judge include the relative stability of the father's and mother's respective households, the wishes of the parents, the preferences of the child, each parent's fitness as a parent, and the health of all concerned. The mother is more likely than the father to receive custody of young children, and children will normally be kept together than split between the parents. The non-custodial parent will almost always be given reasonable visitation rights.

Generally, there is a better chance of receiving child support than alimony (maintenance). The courts almost always award child support and will consider the number of children requiring support. To determine the amount of support, the court will consider the following factors: the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had the marriage not been terminated; the physical and emotional condition of the child; and the educational needs of the child.

Many soldiers believe the only support they owe is an amount equal to their basic allowance for quarters (BAQ) at the with dependent rate. This is not entirely accurate. Army regulations provide that in the absence of a court order or separation agreement specifying support, the soldier is required to provide interim financial support in an amount equal to BAQ at the with dependent rate to his family members. This amount may then be pro rated among his family members. The Army's formula is not intended to be a substitute for the court's decision regarding child support, and the court's actual decision regarding child support could be greater or lesser than what the Army requires as a temporary measure.

Division of Property. Kentucky follows the rule that each spouse is entitled to keep their separate property which was acquired by them before the marriage, but there will be an equitable distribution of their marital property. Marital property includes property which was acquired after the husband and wife were married. This means the court will divide the marital property, without regard to fault or marital misconduct, in just or fair proportions, taking into consideration the length of the marriage, the spouse's contributions to the marriage to include the contribution of a spouse as homemaker, the value of the property, and the economic circumstances of each spouse. The court will also consider the desirability of awarding the family home or the right to live there for a reasonable period to the spouse having custody of the children.

The division of property will include personal property such as household goods, automobiles, and bank accounts, as well as real estate. Liabilities such as loans and bills will be considered in the equitable distribution. A soldier's military retirement pension is considered marital property even if the soldier has not yet reached retirement eligibility. The court will use a formula which awards the non-military spouse a percentage of the soldier's military pension based upon the number of years they were married while the spouse was in the military.

SEPARATION AGREEMENTS

The parties to divorce may agree on the issues of maintenance, child custody and support, and property division. If so, they can voluntarily enter into a separation agreement which can be made part of the final divorce decree.

TAX CONSEQUENCES OF DIVORCE

Alimony or spousal maintenance may be deducted from the paying spouse's federal income tax if certain conditions are met. If the maintenance is deducted from the payer, then it will be included in the gross income for federal tax purposes of the person receiving the maintenance.

Child support is not deductible to the paying spouse nor included in income of the receiving spouse for federal income tax purposes. Effective 1 January 1985, however, the custodial parent is entitled to an exemption regardless of the amount of child support provided by the non-custodial parent. The custodial parent can waive this right by giving a signed waiver of the exemption to the other parent who must attach a copy of the waiver to the tax return for that year.

SOME QUESTIONS ON DIVORCE

1. Can a military attorney obtain a divorce in Kentucky for me? NO. You will need to hire a private attorney to file for divorce and get a judgment.

2. Who pays for my lawyer? As a general rule, you must retain and pay for your own attorney in a divorce case. In Kentucky, the court is permitted after considering the financial resources of both parties, to order one party to pay a reasonable amount for the cost and attorney's fees.

3. What if my spouse will not give me a divorce? The judge is the person who grants a divorce, not your spouse. Once you have filed the petition for divorce at the court house, your attorney will serve a copy of it on your spouse. If your spouse does not respond within 20 days of receiving a copy of the petition and the summons to appear in court, you will probably be granted a divorce by default.

4. Is my divorce final when the judge signs the written judgment? ALMOST. After the judge signs the written judgment, it is delivered to the circuit clerk who records it in the civil docket book. This notation is the entry of the judgment, and the divorce becomes effective on that date.

5. Can I resume my maiden name after my divorce? YES. The wife may request the court to order her maiden name or a former name restored if there are no children of the parties.

6. Can I use mental cruelty, adultery, or other marital misconduct as a ground for divorce in Kentucky? NO. The only ground for divorce is irretrievable breakdown of the marriage.

7. If my home is another state, but I am stationed in Kentucky, can I file for a divorce in Kentucky? YES. The Kentucky statute specifically provides that the Circuit Court has jurisdiction if it "finds that one of the parties, at the time of the action was commenced, resided in this state, or was stationed in this state while a member of the armed services, and that the residence or military presence has been maintained for 180 days next preceding the filing of the petition."

8. Can the judge in Kentucky order a property division at the time of the divorce? YES. As part of the divorce, the judge can divide the marital property of the parties. If both parties are before the court, then the judge can dispose of all the marital property regardless of its location. However, if the party being sued has refused to respond and has not been personally served with the petition for divorce, then the judge can only divide the marital property located in Kentucky. The judge cannot

divide separate property, that which was acquired before the marriage; the judge can only assign each spouse's property to him or her.

9. How will the judge divide the property? Marital property will be equitably divided in a just and fair manner between the spouses. Marital property includes a soldier's military retirement even if the soldier has not yet reached retirement eligibility. The court uses a formula which awards the non-military spouse a percentage of the military pension based upon the number of years they were married while the soldier-spouse was in the military.

A legal assistance attorney cannot represent you in court for a divorce. You must obtain a civilian attorney for filing the petition for divorce and obtaining the divorce decree. A legal assistance attorney can advise you on divorce matters, negotiate with your spouse on alimony, child support and custody, and division of property, and refer you to a civilian attorney.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771. Our hours of operation are Monday through Friday, 0800 - 1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall (north of the post office on Knox Street).
